

**CITY OF MILPITAS
APPROVED**

PLANNING COMMISSION MINUTES

January 12, 2005

**I.
PLEDGE OF
ALLEGIANCE**

Chair Lalwani called the meeting to order at 7:00 P.M. and led the Pledge of Allegiance.

**II.
ROLL CALL**

Present: Azevedo, Galang, Garcia, Lalwani, Mandal, Mohsin and Williams
Absent: None
Staff: Carrington, Karlen, Lindsay, Pereira, Joki, Weisgerber, and Rodriguez

**III
PUBLIC FORUM**

Chair Lalwani invited members of the audience to address the Commission on any topic not on the agenda, noting that no response is required from the staff or Commission, but that the Commission may choose to agendaize the matter for a future meeting.

There were no speakers from the audience.

**IV.
APPROVAL OF MINUTES
December 8, 2004**

Chair Lalwani called for approval of the minutes of the Planning Commission meeting of December 8, 2004.

There were no changes from the Commission.

Motion to approve the minutes.

M/S: Garcia/Mohsin

AYES: 4

NOES: 0

ABSTENTIONS: 3 (Azevedo, Mandal and Williams)

**V.
ANNOUNCEMENTS**

Mr. Lindsay congratulated new planning commissioners Norman Azevedo, Cliff Williams and Sudhir Mandal who were sworn in before the meeting.

He also announced that the annual Commissioner's Recognition dinner will be held on Wednesday, April 20, 2005 at the Embassy Suites. Also, the January 26, 2005 Planning Commission meeting will start at 8:00 p.m. because the 50th anniversary committee will be hosting an event at 7:00 p.m. in the Council Chambers

Chair Lalwani announced that Gurdev Sandhu is invited back to the January 26, 2005 meeting to be recognized for his outstanding service to the Planning Commission.

Commissioner Williams acknowledged fellow commissioner Gurdev Sandhu. He also asked staff to update the Planning Commission Subcommittee rotation schedule and Mr. Lindsay noted that it would be done by the next meeting.

**VI.
CONFLICT
OF INTEREST**

Chair Lalwani asked if the Commission has any conflict of interest on tonight's agenda.

Commissioner Azevedo announced that he would be abstaining on Item No. 3 - Use Permit Amendment No. UA2004-18: A request to add food convenience sales to an existing Walmart retail store consisting of refrigerated and frozen food display and a walk-in cooler and freezers at 301 Ranch Drive.

**VII.
APPROVAL OF
AGENDA**

Chair Lalwani called for approval of the agenda.
The Commission had no changes.

Motion to approve the agenda.

M/S: Galang/Mandal

AYES: 7

NOES: 0

**VIII.
CONSENT CALENDAR
Consent Item Nos. 3, 4, 5, 6,
7, 8, 9 and 10**

Chair Lalwani asked whether staff, the Commission, or anyone in the audience wished to remove or add any items to the consent calendar.

Mr. Lindsay noted that staff has no changes to the consent calendar but pointed out that the Commission was given two letters related to Item No. 5 dated January 9, 2005 and Item No. 8 dated January 10, 2005.

Vice Chair Garcia asked about Item No. 4, which is the addition of 20 seats at 141 Dixon Road and noted that there are sign violations and asked staff to look into it. Also, for Item No. 8, he has no problems with Indotaste restaurant however he is concerned about parking and traffic flow in that area and asked staff to look into it. Mr. Lindsay replied that staff will follow up with that and will report back to the Commission.

Chair Lalwani opened the public hearing on Consent Item Nos. 3, 4, 5, 6, 7, 8 and 9.

Joe Mackinini, 850 Berryessa Street, requested that Item No. 5 be removed from the consent calendar.

Close Public Hearing

Motion to remove Item No. 5 from the consent calendar and close the public hearing on Consent Item Nos. 3, 4, 6, 7, 8 and 9.

M/S: Mohsin/Williams

AYES: 7

NOES: 0

Motion to approve Consent Item Nos. 3, 4, 6, 7, 8, 9 and 10.

M/S: Williams/Mohsin

AYES: 6

NOES: 0

ABSTENTIONS: 1 (Azevedo – on Item No. 3 only)

***3 USE PERMIT AMENDMENT NO. UA2004-18:** A request to add food convenience sales to an existing Walmart retail store consisting of refrigerated and frozen food display and a walk-in cooler and freezers at 301 Ranch Drive (APN: 022-29-016) zoned General Commercial (C2). Applicant: Raymond H. Harris. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2408) (*Recommendation: Approval with Conditions*)

- *4 USE PERMIT AMENDMENT NO. UA2004-15:** A request to add 20 seats to an existing take-out restaurant with no seating, located at 141 Dixon Road (APN: 026-05-019), zoned Neighborhood Commercial (C1). Applicant: Ngo Luong. Project Planner: Kim Duncan, (408) 586-3283. (PJ# 2296) *(Recommendation: Approval with Conditions)*
- *6 USE PERMIT NO. UP2004-39:** A request to locate a video rental and sales store at 1351 Jacklin Road (APN: 029-05-040), zoned Neighborhood Commercial (C1). Applicant: Steven Luk. Project Planner: Cindy Hom, (408) 586-3284. (PJ# 2301) *(Recommendation: Approval with Conditions)*
- *7 USE PERMIT NO. UP2004-63:** A request to operate a retail office furniture store in 39,500 square feet of an existing industrial building, which includes modifications to parking requirements, located at 155-166 S. Milpitas Boulevard (APN: 086-28-030), zoned Heavy Industrial (M2). Applicant: West Coast Office Solutions. Project Planner: Staci Pereira, (408) 586-3278. (PJ# 2407) *(Recommendation: Approval with Conditions)*
- *8 USE PERMIT AMENDMENT NO. UA2004-14 AND S-ZONE APPROVAL AMENDMENT SA2004-114:** A request to amend an existing use permit to add outdoor seating and the serving of beer and wine at Indotaste Restaurant, located at 273 West Calaveras Boulevard, (APN: 022-25-042), zoned General Commercial (C2). Applicant: Harry Kho. Project Planner: Troy Fujimoto, (408) 586-3287. (PJ# 2351) *(Recommendation: Approval with Conditions)*
- *9 SIX MONTH REVIEW NO. PR2004-8:** A six-month review of Tofu House Restaurant to verify compliance with special conditions of approval associated with Use Permit Amendment No. UA2002-8 and the third six month review of Anh Hong Saigon Restaurant (UA2003-18), continued from the September 24, 2003 meeting, located at 231 and 233 West Calaveras Boulevard (APN: 022-25-041), zoned General Commercial (C2). Applicants: Tofu House and Anh Hong Saigon Restaurant. Project Planner: Troy Fujimoto, 586-3287. (PJ# 2245) *(Recommendation: Note Receipt and File)*
- *10 "S" ZONE APPROVAL AMENDMENT NO. SA2004-119:** A request to have an outdoor display and/or for-sale products at the front of the Save Mart Supermarket, 215 West Calaveras Boulevard (APN: 022-25-048), zoned General Commercial (C2). Applicant: Save Mart Supermarket. Project Planner: Troy Fujimoto, (408) 586-3287. *(Recommendation: Approval with Conditions)*

IX. PRESENTATION

1. REDEVELOPMENT AGENCY ANNUAL REPORT: *(Staff Contact: Emma Karlen)*

Emma Karlen, Finance Director, presented a review of FY 2003-2004 Redevelopment Agency Audited Financial Statements and Annual Report and noted that no recommendation is required from the Commission.

Commissioner Garcia asked what the term “defeasance” means on the Great Mall bond. Ms. Karlen said it means refunding of the bond and the reason why it is not called refunding is because there are two types of refunding. One type of refunding is when the bond is immediately repaid and the other type of refunding is putting the bond in an escrow account to pay for future debt service and that is the “defeasance”.

Commissioner Garcia asked if the City has any recourse with the county for the reduction of land value, which caused a reduction in the property tax. Ms. Karlen noted that the county approved it based on their estimate of the market value, however, it is a temporary reduction and in the future when the market value is increased it will go back to the pre tax value.

Commissioner Mandal asked if the City has long-term debt. Ms. Karlen replied that the Redevelopment Agency has long-term debt and there was a bond that was issued last year.

Commissioner Mandal asked when does the fiscal year start and Ms. Karlen replied July 1st. Commissioner Mandal asked who are the external auditors and Ms. Karlen replied Mace and Associates.

Vice Chair Garcia noted that he was impressed with what the City was able to do in 2004 with the issuance of the bonds and the retirement of the 1997 and 2000 bonds and also having the flexibility to do a whole lot with the redevelopment area. He asked Ms. Karlen in her opinion, does she think the City will have difficulties paying back the bond because of the continued levelness of the economy, lower property taxes, funding and any other raids by the state government. Ms. Karlen stated that it is a concern, but at the time of the issuance, staff was very conservative, and looked at the worst case scenario and made sure there was a coverage of at least 125% to make the bond payment.

Vice Chair Garcia asked how often is the Commission briefed on the Redevelopment Agency and what role does the RDA play in projects, especially with the Midtown area. Ms. Karlen explained that the RDA is a tool for to eliminate physical and economical blight for the midtown area and other areas that will need assistance. She also said she would be happy to provide an update and a written report to the Commission on areas of interest.

X. PUBLIC HEARING

ENVIRONMENTAL IMPACT ASSESSMENT NO. EA2004-12, USE PERMIT NO. UP2004-31, AND "S" ZONE APPROVAL AMENDMENT NO. SA2004-95

Staci Pereira, Assistant Planner, presented the request for approval of a 38,632 square foot religious facility in an existing building in the Heavy Industrial (M2) zoning district with ancillary uses, including classrooms, offices and multipurpose rooms, which requires a parking modification, and the adoption of a mitigated negative declaration, at 215 Topaz Street and recommended approval with conditions.

Ms. Pereira also brought to the Commission's attention a change in condition no. 9 which reads as follows:

9. This use permit approval does not allow for any day care facilities or a K-12 school as defined by the Education Code of the State of California to operate at this site.
(P)

Commissioner Galang noted that under facility operations, the sanctuary is proposed with non-fixed seats and asked for clarification. Ms. Pereira clarified that the church has not decided if they will be using fixed seats so they have requested removable chairs.

Commissioner Galang noted the project proposes for the ceiling in the sanctuary to be raised 35 feet to enhance the acoustics during services and asked for clarification.

Commissioner Galang asked staff if they see any problems with noise. Ms. Pereira noted that the sanctuary is proposed in the center of the building and has numerous rooms around it and doors will be closed during services so staff wouldn't anticipate any exterior noise increases as a result.

Commissioner Galang, requested clarification of condition no. 17:

17. Both the Risk Assessment and Emergency Action Plan shall be reviewed, updated and submitted to the Fire Department for review on an annual basis. This review shall incorporate any changing conditions within industry and chemical usage within the area. It shall also incorporate any engineering/administrative controls and technological advances available. An individual meeting Fire Department requirements shall prepare the updated plans. (F, Mitigation Measure No. 8)

Ms. Pereira explained that industrial users have to notify the Fire Department whenever a new chemical is used. On an annual basis, the church would need to obtain the information and complete a risk assessment.

Commissioner Mandal asked if there are residential properties within a mile radius from the proposed church. Ms. Pereira said that there are residents in the Sinclair Horizons subdivision located off Los Coches and other homes on the north end of Hillview.

Commissioner Mandal asked what type of activities the church would have during the week. Ms. Pereira explained that the office and conference room will be available to church members and on Friday evenings adult classes will be held. Ms. Pereira also pointed out that the facilities are intended for the congregation only.

Commissioner Mandal asked if there would be traffic impacts to the neighborhood. Ms. Pereira stated that the existing building has been used for industrial uses and the parking that now exists was able to accommodate the previous use and the church parking will not exceed that. In addition, the church peak use will be on the weekends when nearby offices will be closed.

Commissioner Mandal asked if there would be heavy machines in the area or heavy trucks that would be concern for a hazard. Ms. Pereira replied that to her knowledge, the majority of businesses operate during the week and she is unaware of intense uses during the weekends.

Vice Chair Garcia recalled that BART would be running right behind the proposed church facility and when discussing this with a church member, he was unaware of it. Vice Chair Garcia asked if there are any noise issues from BART that would impact the church that staff is aware of. Ms. Pereira stated when analyzing noise impacts, the party would have to look at the impacts that the facility proposes in the surrounding neighborhood. A future use prediction is not analyzed in the environmental assessment

Mr. Lindsay pointed out that the noise impacts were fully analyzed within the BART EIR project and includes mitigation measures to bring the noise levels down as much as possible.

Vice Chair Garcia noted that in the past, Mr. Lindsay created a map that showed religious facilities within industrial areas and asked if there are any religious facilities near the proposed use.

Mr. Lindsay clarified that in the fall of last year, staff created a map showing quasi public uses within industrial areas. There is a Jehovah witness church located on Hillview and at the next Planning Commission meeting, there will be a proposal for an Indian Community Center on Los Coches. Staff plans on reporting back to the Commission shortly on findings and research of these facilities in industrial areas.

Vice Chair Garcia asked if staff's recommendation resulting from the report would apply to the current church proposal. Ms. Lindsay replied that the Commission would provide staff direction on how they would want to proceed. If the Commission directs staff to change the ordinance, staff would take it forward to City Council for consideration and until the ordinance is effective, there will be no impacts to current projects.

Chair Lalwani asked staff to clarify the addendum attached to the environmental report. Ms. Pereira stated a risk assessment was done for the proposed church and also for the proposed India Community Center. The India Community Center had a separate consultant who discovered different information and the addendum was included in the proposed project.

Chair Lalwani asked if there was an accidental release and the property owner did not report any new chemicals, would the City be liable. **Fire Chief Bill Weisgerber**, explained that the liability falls on the property owner who is maintaining the chemicals. By law, the property owner would have to report the chemicals. If there is a release of an unknown chemical, once the response is mitigated, there would be an investigation and the property owner would be subject to prosecution.

Commissioner Mohsin suggested that in case of a chemical release, notification announcements should be interpreted in different languages. Ms. Pereira suggested a modification to special condition no. 10 to read the following:

*10. Prior to building permit issuance, the tenant improvement plans shall indicate an airborne chemical monitoring system (sensors), with detection and response/notification capabilities that shall be designed and installed by the applicant. The sensors shall be specific for the gases identified in the Risk Assessment as having the potential of impacting the site (chlorine and hydrogen bromide). Notification shall alert Fire dispatch of an alarm and also provide in-place communication both inside and outside of the building to alert occupants of an emergency, via pre-recorded message **(required to be in English and in the other dominant language of the facility users)**, and shall direct them on emergency procedures to follow. The sensors and alarm systems shall be maintained in an operable manner and tested on an annual basis. Maintenance and testing shall be performed by a qualified person and records be made available to the Fire Department for inspection upon request. As part of the monitoring system, building ventilation shall have manual and automatic shutoff capabilities with the control device located per Fire Department direction. (F, Mitigation Measure No. 1)*

Commissioner Mandal asked what is the trend of development in the industrial area. Ms. Pereira, the area is already developed, so we are not seeing new construction, we are seeing a change in tenants, a lot of availability of industrial space and a decrease in rent because of the high surplus of vacant space, so we are seeing a lot of other types of non industrial uses because it is more affordable and more feasible.

Commissioner Williams pointed out that there are two rail lines adjacent to the property and which have cargo that carry hazardous materials. He asked if the consultant analyzed this information in their report. Ms. Pereira replied that staff is aware that there are unknown chemicals in the railroad however the consultant was not asked to analyze this information.

Commissioner Williams stated historically, when churches acquire industrial buildings, they might be sharing with a co-tenant at which time they have special events where other churches or the public may be invited. He asked if the applicant is planning to have such events as part of their annual activities, and if so, how many cars are projected and when would they have them? Ms. Pereira explained that it was intended by the applicant that the facility be used by congregation members only. If they were to have a wedding, it would not be occurring concurrently with the offices and with the sanctuary. She asked the Commission to refer to the staff report in the parking schedule which shows the multi purpose rooms and the worship halls have a parking requirement that could be accommodated on site if the sanctuary and other uses were not in use.

Alice Zee, Associate Pastor with Santa Clara Christian Assembly, clarified that the church hasn't held any annual events to the general public and has strict policies renting out the facility, however the general public is welcomed to attend church on Sunday. She doesn't see any problems with parking because most members carpool with their families.

Commissioner Williams inquired about fellowship with other churches where they might be invited to share in a special program and asked if that is something the church participates in and if so, what is the estimate of volume of attendance. Pastor Zee noted that she has been with the church for about four years and has never done that with other churches. When there is an event with other churches, they are usually held in hotels or conference centers.

Commissioner Williams asked Pastor Zee if she was aware of a program called Business Partners for Emergency Preparedness in which businesses and other cities participate together to prepare for emergencies. Pastor Zee said she was not aware of the program however she would be more than happy to participate.

Chair Lalwani asked if residents who live near an industrial area are notified when a business containing hazardous chemicals locates nearby. **Patti Joki, Fire Marshall**, noted that the City keeps an inventory of chemicals used and has a public disclosure program where anyone can come in and see the list.

Chair Lalwani invited the applicant to make a presentation.

David Jeng, Pastor of Santa Clara Christian Assembly, located at 123 Dempsey Road noted that during the past nine years, the church has provided emotional and spiritual support and has encouraged people to relocate closer to the church. As a result, the congregation has grown and the current facilities are no longer able to accommodate the continued growth and the church needs more space. At first, the church was concerned with moving to a heavy industrial zone so the church obtained environmental reports to evaluate what kind of health and safety risks would be involved. Based on the conclusion, the Topaz property was deemed safe for use, and at this point the church decided to go forward. The church intends to comply with all fire and building codes and also mitigation measures, and has even changed architects who can better serve the area. Pastor Jeng asked the Commission to approve the project.

Suzette Lee, Environmental Scientist, pointed out that conservative assumptions were used in the risk assessment. According to the Fire Department's guidelines, the risk assessment calls for evaluation of a worst case scenario which involved assuming that a potential catastrophic release in the neighborhood industrial facilities would result in gas plume that would be blown directly to the proposed site. According to the San Jose International Airport, the closest source of data, the prevailing wind directions are actually to the northwest, and the greatest percentage of the time the prevailing wind actually blows in a different direction than the 215 Topaz site. She explained there is a possibility of an errant wind that would direct the plume toward the site, however in her professional opinion, she felt confident that the mitigation measures would be adequately protective of seniors and children.

Pastor Zee stressed that the church does have low usage during the weekdays and does not have plans for daycare. Part of the church policy is that parents cannot drop off their kids and go home, they have to remain responsible for their own children during service time. The church also doesn't have plans for outdoor activities. The church understands the concerns regarding the chemicals in the neighborhood, however she believes that the consultant worked well with the Fire Marshall in developing mitigation measures and the church is happy to go along with them. In fact, the church has been alerting the congregation about potential risks involved. Pastor Zee appealed to the Commission to approve the application.

Chair Lalwani opened the public hearing.

Ken Singh, 2063 Frank Court, questioned the judgment of the Commission regarding an area that is clearly marked an industrial zone and could clearly be hazardous to the congregation. He wants to know how can the Planning Commission approve a project like this and who would be at fault if there was an accidental release of chemicals. He noted the City of Palo Alto has a Human Relations Commission and suggested the City form a similar type of Commission. He also asked if the Commission inquires about issues regarding religious institutions.

Kit Faubion, City Attorney, explained that the City of Milpitas treats a religious organization as an assembly of people at one place at one time. The details of their religious observances and practices are not an issue and are not addressed except in so far as there are people doing something. If there is a particular kind of activity such as a school use, and if that arises to a particular kind of use, it would be regulated, otherwise, the religious nature of the assembly and the details of religious practices are not an issue with the City.

Eric, Broker for 215 Topaz, explained that the parking requirement identified in the staff report and understanding what happens in other cities with this type of application where there is parking encroachment on neighboring buildings and tenants pointed out that the 177 spaces per 38,000 square feet represents a 4.58 per thousand parking ratio. Most industrial buildings have significantly less than 4 per thousand parking ratios. In many cases, applicants coming to the table with a 3 per thousand parking ratio try to get a similar use. The expansion of 12 stalls by the removal of the docking area, which is no longer required, helps assist in that. Secondly, he explained that the specific uses identified in the plan of the building has significantly less sanctuary square footage than most churches of a building the same size. The proposed sanctuary is less than 5,000 s.f. of a total building footprint of just under 39,000 sf. He felt that from parking risk assessment there shouldn't be an issue with parking.

Close Public Hearing on Item No. 1 Motion to close the public hearing.

M/S: Mohsin/Williams

AYES: 7

NOES: 0

Motion to approve Environmental Impact Assessment No. EA2004-12, Use Permit No. UP2004-31, and "S" Zone Approval Amendment No. SA2004-95 and adoption of mitigated negative declaration with modified condition nos. 9 and 10 noted above.

M/S: Mandal/Galang

AYES: 7

NOES: 0

**2. ENVIRONMENTAL
IMPACT ASSESSMENT
NO. EA2004-10, USE
PERMIT NO. UP2004-17,
AND 'S' ZONE
APPROVAL
AMENDMENT NO.
SA2004-70:**

Dennis Carrington, Senior Planner, presented a request to install an approximately 63 foot tall artificial tree pole, six (6) telecommunication antennas and associated ground mounted equipment located at 420 Railroad Court. Mr. Carrington recommended the Commission adopt mitigated negative declaration and approve with conditions.

Commissioner Williams appreciated the fact that the applicant is utilizing the telecommunication program to camouflage the antennas. He asked what is the material composition of the branches and what is the expected life span when it would require maintenance or replacement.

Mr. Carrington noted the tree itself would be within an enclosed area, so if a branch would fall, it would be within the vicinity. The site plan does show that it is in an area that is used for railroad purposes and the storage of RV's and containers, so it would be unlikely that people would be there.

Chair Lalwani invited the applicant to make a presentation.

Applicant, Evan Shepherd with Tetrattech Wireless, representing Nextel, 1255 Treat Blvd., in Walnut Creek, noted the trunk of the tree is steel and is bolted to a very elaborate foundation which undergoes structural engineering for seismic as well as wind shield. The bark is an epoxy and that is placed around the tree. The branches are PVC pipe and they have an epoxy. The foliage, the leaves of the tree are plastic material. The tree is securely fastened and is able to withstand wind, snow and rain in other parts of the country. He is not sure what the warranty is however he would be happy to take a condition of approval stating that Nextel would be fully responsible for any repair replacement to the full tree. He will also submit to staff a manufacturers warranty.

Commissioner Williams would feel comfortable having that on file just in case something were to happen to the tree.

Chair Lalwani opened the public hearing.

Joseph Mackinini, 850 Berryessa Street, stated that he has a high tension power pole on his property and doesn't feel that is an appropriate thing to do because it is ugly and he is not sure that it is safe because there hasn't been enough research on antennas. In England, there are warnings that children shouldn't use cell phones because of radiation. Even if cell phone antennas are safe, he said there is a perception that they are not, so the value of his property goes down. He suggested that Nextel either put the antenna on top of a nearby building or buy his house..

Motion to close the public hearing.

**Close Public Hearing on
Item No. 5**

M/S: Mohsin/Mandal

AYES: 7

NOES: 0

Vice Chair Garcia looking at the Nextel map that was handed out of proposed sites and asked if Mr. Mackinini's house is within 300 feet of the site..

Mr. Lindsay said that Mr. Mackinini received a public hearing notice so his house should be within 300 feet.

Vice Chair Garcia asked Mr. Mackinini if he was aware of the design.

Mr. Mackinini said he was aware of the design. At first, he suggested that the applicant put it on the far side of the overpass where there are not any houses and he also suggested they do it as a tree, but no one suggested that they put it within 300 feet of his property.

Commissioner Williams stated the he was sympathetic with Mr. Mackinini's concerns, however looking at the fact of the use of this application, and also looking at the telecommunications report and looking at that data, it doesn't seem to exceed any of the other signal power aspects that have been approved when I was previously on the commission. He knows it is perceived and it is an aesthetic issue, as far as functionality he would have to abide by the directions in which he would be required to vote on, in essence he would approve this application.

Chair Lalwani opened the public hearing

Motion to approve Environmental Impact Assessment No. EA2004-10, Use Permit No. UP2004-17, and 'S' Zone Approval Amendment No. SA2004-70 with the following two special added conditions: 1) Nextel would be fully responsible of the repair and replacement of the life of the tree, and 2) Nextel will provide a manufacturers warranty.

M/S: Galang/Williams

AYES: 7

NOES: 0

**XI.
ADJOURNMENT**

The meeting was adjourned at 8:40 p.m. to the next regular meeting of January 26, 2005.

Respectfully Submitted,

James Lindsay
Acting Planning Manager

Veronica Rodriguez
Recording Secretary